

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 15,097
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding her ineligible for Transitional Medicaid (TM) benefits once her ANFC was closed as of April 1, 1997. The issue is whether the petitioner's ANFC was closed solely for reasons other than an increase in her earnings. The facts, though complicated, are not in dispute, and are taken from the memoranda filed by the parties and the representations of counsel during status conferences with the hearing officer.

FINDINGS OF FACT

1. The petitioner began receiving ANFC for herself and her two children in February, 1996, and was assigned to Group 3 under the Vermont Welfare Reform Project (WRP).

2. In October, 1996, the petitioner began substitute teaching at several schools around her community. She began receiving child support payments of \$116 a month in December, 1996.

3. Between the months of January and May, 1997, the petitioner's earnings from substitute teaching steadily and substantially increased. Those earnings were as follows: January, \$225; February, \$531; March, \$791; April, \$986; and

May, \$1589.

4. The petitioner reported her earnings to the Department, sometimes two times per month, and the Department adjusted the amounts of her ANFC grant each month, and sometimes semi-monthly, on a prospective basis according to the earnings the petitioner had made in the weeks immediately prior to the date of her reports to the Department. Because of this prospective budgeting, and the unpredictability and fluctuating nature of the petitioner's employment, the amounts of income attributed to the petitioner by the Department in these months never exactly coincided with the amounts the petitioner actually ended up earning, as reflected in paragraph 4, above.

5. Based on steady increases in the petitioner's reported earnings through mid-February, 1997, the Department sent the petitioner several notices decreasing the amounts of her ANFC, effective January 15, February 1, March 1, and March 15, 1997.

6. In late February, 1997, the petitioner reported her recent earnings, which, if projected forward, appeared to show a decrease in her earnings from those the Department had previously projected. On the basis of this information, the Department, on March 6, 1997, notified the petitioner that her ANFC would be increased as of March 1, 1997, to reflect a newly-projected decrease in her earnings.<sup>1</sup>

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<sup>1</sup>When the petitioner reported her income in late

7. To complicate matters, the petitioner's oldest child was to turn 18 in March. In its notice to the petitioner on March 6, 1997 (see supra) the Department also terminated the petitioner's ANFC effective April 1, 1997. Even though it now seems clear that the Department calculated the petitioner's ANFC eligibility for April, 1997, based on this decrease in the number of eligible individuals in her household, the notice it sent to the petitioner made no mention of this, and, instead, attributed the reason for the closure as "child support collected caused your ANFC to close".

8. Under the Department's regulations, households that lose their ANFC on the basis of an increase in child support collections are eligible for 4 additional months of "transitional" Medicaid (TM).<sup>2</sup> The Department notified the petitioner (erroneously it turns out) that she was eligible for TM on this basis through July, 1997.

9. It was not until the petitioner was notified of the termination of this period of TM that she consulted an attorney and appealed the fact that she had not been granted TM on the basis of increased earnings, which can qualify a

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February, 1997, she had recently had a decrease in hours worked that made it appear that her income would decrease that month. Had the petitioner remained eligible for ANFC in April, 1997, presumably the Department would have adjusted her ANFC eligibility for that month based on what it turned out she actually made in February.

<sup>2</sup>See Medicaid Manual § M300(B)(3).

household for up to 36 months of TM (see infra).

10. The Department admits that the petitioner's child support did not increase during the period in question and that her ANFC should not have been terminated (and TM granted) on this basis. The Department maintains, however, that the decrease in the petitioner's household size was the sole reason her ANFC was terminated effective April 1, 1997, not any change in her earnings from the month before.

11. Putting aside her problems with the Department's notices, the petitioner does not dispute that her oldest son was ineligible for ANFC as of April 1, 1997, and that the Department used the correct household size (although it did not notify her of it) to determine her ANFC eligibility as of that date.

12. The Department does not dispute that in retrospect it can now be determined that the petitioner's income did not in fact decrease in any of the calendar months October, 1996, through May, 1997.

ORDER

The Department's decision is reversed, and the petitioner is found eligible for Transitional Medicaid based on her increased earnings from November, 1996, through April, 1997.

REASONS

Medicaid Manual (MM) § 300(B)(2) includes the following provisions:

Families (ANFC assistance groups) terminated from ANFC because of increased earnings, hours of employment, or loss of the \$30 and/or 1/3 earned income disregard continue to be eligible for Medicaid for 6 calendar months beginning with the month which immediately follows the month in which the ANFC assistance group becomes ineligible for an ANFC grant if the following three requirements are met:

Note: If ANFC would close solely for another reason, the family is not eligible for this coverage group.

- a. The family (ANFC assistance group) received ANFC in at least three calendar months during the six-month period immediately preceding the month in which the family becomes ineligible for ANFC; and
- b. The family (Medicaid group) continues to include a child who meets the ANFC age criteria for a child as defined in WAM 2301; and
- c. The family continues to reside in Vermont.

. . .

Families (ANFC assistance group) are eligible for an additional 6 calendar months of Medicaid coverage if the following six requirements are met.

. . .

Families in Group 2 or Group 3 of the ANFC Welfare Restructuring Project who qualify for the second six months of Medicaid coverage may be eligible for an additional 24 months of Medicaid coverage if they continue to meet the requirements listed in a through f above.

In a month in which there is both an increase in earned income and another unrelated change in circumstances that would adversely affect the amount of the household's ANFC grant the Department determines whether the other change (in

this case the reduction in the number of eligible household members) would have in and of itself (i.e., notwithstanding any increase in earnings) caused the household to lose its ANFC. If (as the Department determined was the case here) the answer is yes, then the household is ineligible for TM-- i.e., it is determined that ANFC was closed "solely for another reason".

This aspect of the Department's decision in this case is consistent with M300(B)(2)--provided that one looks only at the most recent two months. However, the regulation is silent as to the time period in which to consider whether "increased earnings" have caused the termination of ANFC.<sup>3</sup> The Department considers only the most recent month compared only to the month that immediately preceded it. Under this interpretation an individual, like the petitioner, loses her Medicaid due to an unrelated event even though her earnings have increased significantly and consistently over a period of many months. Depending on the amount of this increase, this strikes the Board as contrary to the stated goal of WRP to "enable more ANFC families to achieve self-sufficiency by. . .rewarding work. . . ." See W.A.M. ¶ 2208.1.

More significantly, it also appears contrary to the provision in ¶ M300(B)(2), itself, that provides for a

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<sup>3</sup> The federal statute upon which the Vermont provisions are based, 42 U.S.C. ¶ 1396r-6(a), is also silent as to the time period in which to consider whether a recipient's earnings have increased.

"lookback period" of six months during which the assistance group must have received ANFC for at least three months in order to qualify for TM. The reasonable extension of this provision, and one which renders the regulation consistent with the goals of WRP, is that the Department must consider the household's earnings over those same past six months to determine if the change in circumstance that caused the household to lose ANFC would have had the same effect if the household's income had not increased over that entire six-month period.

In this case the uncontroverted evidence establishes that in the six months prior to April, 1997, the petitioner consistently increased her earnings from nothing (she was unemployed until October, 1996) to just under \$800 in March, 1997. It is also uncontroverted that if the petitioner had not had these increased earnings over this period of time, the fact that her son turned 18 and was no longer eligible for ANFC as of April 1, 1997, would not, in and of itself, have resulted in the petitioner and her other child losing their ANFC at the same time.

As the petitioner points out, she did exactly what the provisions of WRP intend Group 3 recipients to do--she steadily and consistently increased her earnings and reduced her dependence on ANFC. Had she known that her increased earnings would cause her to lose her Medicaid when her oldest child turned 18, she might well have been better off

(and would not have been penalized for) reducing or limiting her working to a level that kept her and her other child eligible for ANFC. The Department's interpretation of   M300(B)(2) retroactively removes this incentive under WRP for the petitioner to have increased her working during these months. Nothing in the language of the regulation supports such a harsh result, and the goals of WRP dictate that it not be countenanced.

Therefore, it must be concluded that the petitioner was terminated from ANFC "because of increased earnings" within the meaning of   M300(B)(2), supra. The Department's decision denying her Transitional Medicaid on this basis is reversed.

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